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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 SUZANNE CAREY,

12 Plaintiff,

13 v.

14 PIERCE COUNTY SUPERIOR COURT
15 DOMESTIC VIOLENCE UNIT; W.
16 STEVE GREGORICH; MICHELLE
17 LUNA-GREEN; CHARLENE
18 MANNING; and DAN LADENBERG,

19 Defendant.

CASE NO. C11-5828RJB

ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS

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This matter comes before the court on Defendants' 12(b)(1) and 12(b)(6) Motion to Dismiss and Motion to Limit Plaintiff's Filings (Dkt. 13). Upon transfer of this case to the undersigned on February 13, 2012, the Court has reviewed the entire file and the file in Cause Number C10-5592BHS, with particular attention being paid to the Complaint in both cases, the Order Granting Defendants' Motion to Dismiss in C10-5592BHS, and the documents filed in support of and in opposition to the pending motion. The court is fully advised.

1 The Complaint in this case is functionally identical to the Complaint filed in Cause
2 Number C10-5592BHS, except that plaintiff has added an additional party. Compare Dkt 3 and
3 C10-5592BHS at Dkt. 12. The Complaint in this case fails to state a claim upon which relief can
4 be granted in this Court, and therefore must be dismissed under Federal Rule of Civil Procedure
5 12(b)(6).

6 In Cause Number C10-5592BHS, Defendants moved to dismiss Plaintiff's claims
7 pursuant to Fed. R. Civ. P. 12(b)(6). See C10-5592BHS at Dkt. 21. Plaintiff failed to respond
8 and the court entered an Order to show cause that reserved ruling on the motion to dismiss and
9 ordering Plaintiff to show why her claims should not be dismissed for the reasons stated in
10 Defendants' motion. See C10-5592BHS at Dkt 28. Plaintiff was advised of her obligations in
11 the face of a Rule 12(b)(6) motion. See Cause No. C10-5592BHS at Dkt. 28. Plaintiff's
12 response failed to meet her obligations and the court granted Defendants' motion to dismiss
13 pursuant to Fed. R. Civ. P. 12(b)(6). See C10-5592BHS at Dkt. 31.

14 Although Plaintiff claims that the dismissal was without prejudice, a dismissal under
15 Rule 12(b)(6) for failure to state a claim constitutes a judgment on the merits. See *Federated*
16 *Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 399 n. 3 (1981). The order granting Defendants'
17 motion to dismiss was on the merits and with prejudice as to question of whether the Complaint
18 stated a claim upon which relief could be granted. See C10-5592BHS at Dkt. 31.

19 The Ninth Circuit Court of Appeals has held that a dismissal with prejudice entered
20 pursuant to Rule 12(b)(6) for failure to state a claim on which relief can be granted is a
21 "judgment on the merits" to which the doctrine of claim preclusion applies. *Stewart v. U.S.*
22 *Bancorp*, 297 F.3d 953, 957 (9th Cir. 2002); *Hells Canyon Preservation Council v. U.S. Forest*
23 *Serv.*, 403 F.3d 683, 686 (9th Cir. 2005).

1 The doctrine of *res judicata*, or claim preclusion, bars any future claims that were raised,
2 or could have been raised, in a prior action. *Owens v. Kaiser Foundation Health Plan, Inc.*, 244
3 F.3d 708, 713 (9th Cir. 2001). In order to bar a later suit under the doctrine of *res judicata*,
4 adjudication must (1) involve the same claim as the later suit; (2) have reached a final judgment
5 on the merits, and (3) involve the same parties or their privies. *Headwaters, Inc. v. U.S. Forest*
6 *Service*, 399 F.3d 1047, 1052 (9th Cir. 2005). *Res judicata* can be asserted against a party to a
7 prior case by a stranger to the original case. *Moore v. Brewster*, 96 F.3d 1240, 1244 (9th Cir.
8 1996).

9 The Complaint in this case involves the same claims as Cause Number C10-5592BHS,
10 and a final judgment on the merits of that Complaint as to whether it stated a claim was reached,
11 and this case involves the same parties, with the additional party who was in privity with the
12 parties to the earlier case and could have been sued in the earlier case.

13 The instant action is subject to *res judicata* and subject to dismissal.

14 The rules of collateral estoppel also apply here. Collateral estoppel or issue preclusion
15 may be applied only when "an issue is actually and necessarily determined by a court of
16 competent jurisdiction...." *Frank v. United Airlines*, 216 F.3d 845, 853 (9th Cir. 2000). "Under
17 collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment,
18 that decision may preclude relitigation of the issue in a suit on a different cause of action
19 involving a party to the first case." *Dodd v. Hood River County*, 59 F.3d 852, 863 (9th Cir.
20 1995). Collateral estoppel applies only where it is established that (1) the issue necessarily
21 decided at the previous proceeding is identical to the one which is sought to be relitigated; (2) the
22 first proceeding ended with a final judgment on the merits; and (3) the party against whom
23 collateral estoppel is asserted was a party or in privity with a party at the first proceeding.

1 *Trevino v. Gates*, 99 F.3d 911, 923 (1996). "The party asserting preclusion bears the burden of
2 showing with clarity and certainty what was determined by the prior judgment." *Offshore*
3 *Sportswear, Inc. v. Vuarnet International, B.V.*, 114 F.3d 848, 850 (9th Cir.1997).

4 The issue here - whether the Complaint states a claim upon which relief can be granted -
5 is functionally identical to the same issue in the earlier case. The earlier case was decided by a
6 final judgment on the merits of that issue, and it involved the same parties and one additional
7 individual who is in privity with the parties defendant in the first proceeding.

8 The instant action is barred by collateral estoppel and subject to dismissal.

9 In addition to the rules of *res judicata* and collateral estoppel, it is clear to the Court that
10 the Complaint in this case fails to state a claim upon which relief can be granted.

11 Federal Rule of Civil Procedure 8(a) states, "A pleading that states a claim for relief must
12 contain: (2) a short and plain statement of the claim showing that the pleader is entitled to
13 relief." Plaintiff's Complaint is neither short nor is it a plain statement of her claim showing that
14 she is entitled to relief. The Court cannot decipher, from the Complaint, just who Plaintiff is
15 trying to sue for exactly what. There is no plain statement of who violated exactly what rights of
16 Plaintiff that would be cognizable in a federal court proceeding.


17 The Complaint does not state a claim upon which relief can be granted in this court, and
18 accordingly, Defendants' Motion to Dismiss (Dkt. 13) should be **GRANTED**, and this case is
19 **DISMISSED**.

20 The court will consider the Defendants' motion to limit plaintiff's filings in a separate
21 order.

22 **IT IS SO ORDERED.**

1 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
2 to any party appearing *pro se* at said party's last known address.

3 Dated this 15th day of February, 2012.

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6 ROBERT J. BRYAN
7 United States District Judge
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